UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,526	02/23/2004	Richard E. Rowe	IGT1P042C1/P- 392 DIV CON	1568

79646 7590 08/19/2009

Weaver Austin Villeneuve & Sampson LLP - IGT
Attn: IGT
P.O. Box 70250
Oakland, CA 94612-0250

EXAMINER	
SAGER, MARK ALAN	

ART UNIT	PAPER NUMBER
3714	

MAIL DATE	DELIVERY MODE
08/19/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/785,526	ROWE, RICHARD E.	
	Examiner	Art Unit	
	M. Sager	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 April 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *4/30/09*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claim Interpretation

1. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also In re Swinehart, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original). MPEP 2114.

2. Also, claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure. However, examples of claim language, although not exhaustive, that may raise a question as to the limiting effect of the language in a claim are: (A) " adapted to" or "adapted for" clauses; (B) "wherein " clauses; and (C) "whereby" clauses. The determination of whether each of these clauses is a limitation in a claim depends on the specific facts of the case. In Hoffer v. Microsoft Corp., 405 F.3d 1326, 1329, 74 USPQ2d 1481, 1483 (Fed. Cir. 2005), the court held that when a "whereby' clause states a condition that is material to patentability, it cannot be ignored in order to change the substance of the invention." Id. However, the court noted (quoting Minton v. Nat 'l Ass 'n of Securities Dealers, Inc., 336 F.3d 1373, 1381, 67 USPQ2d 1614, 1620 (Fed. Cir. 2003)) that a "whereby clause in a method claim is not given

weight when it simply expresses the intended result of a process step positively recited.'" Id. MPEP 2111.04. In this case, the 'wherein' clauses are end result or environment of use that fail to patentably distinguish such that the clauses do not state a condition that is material to patentability. Also, the aforementioned 'wherein' clauses fail to further structurally define the claimed machine as a repository (i.e. server/database) and gaming system, since the clauses appear to relate to function.

Claim Rejections - 35 USC § 103

3. Claims 1, 3, 5-9, 12-17 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over disclosed admitted prior art in view of Wain (4335809). This holding is maintained from prior action for cited claims as amended as restated below. Response to Applicant arguments is provided below and incorporated herein. The instant application presents admitted prior art as a server and system known or used by others that includes a network interface for communicating with gaming terminals (para 3-12, fig. 1), a memory to store gaming transaction information received from the plurality of gaming terminals (para 3-12, fig. 1, esp. para 5 for player tracking, accounting, cashless award ticketing, lottery, progressive games and bonus games) and, game software components for use by the plurality of gaming terminals (para 3-12, fig. 1), game software components for use by the plurality of gaming terminals wherein each of the gaming terminals is used to present a game of chance that is regulated by a gaming jurisdiction in which the gaming terminal is located (para 3-12, fig 1), a processor to download to the gaming terminals game software components that comply with rules of gaming jurisdiction in which the gaming terminals are located (para 3-12, fig. 1, esp. para 2-5 that states in part 'gaming machines may be dynamically configured' where game software components comply

with gaming jurisdiction by happenstance to operate lawfully), to download particular game software to a gaming terminal (para 3-13, fig 1, para 2-5 that states in part: gaming machines may be dynamically configured thereby including game software update, adding new feature, correction of bugs or replacement of games), wherein the game software components include game system components (abstract, para 3-12 fig. 1), to identify a user playing a game of chance at a gaming terminal (para 5, player tracking), to group a portion of the plurality of gaming terminals for generating a progressive game on the portion of gaming terminals and downloading software allowing a progressive game to be generated on the plurality of gaming terminals (para 5, 7-8, fig 1; implicit for linked progressive game; as further evidence under 2144.03 and 2131.01 of linked progressive game terminals see Torango 5885158 or Kelly 5816918 or Xidos 5851149), to download game software for allowing a promotion [as a bonus] to be generated on the plurality of gaming terminals wherein a portion of the gaming terminals used in the promotion are owned by first gaming entity and wherein a second portion of the gaming terminals used in the promotion are owned by a second gaming entity (para 5-8, fig 1; as further evidence under 2144.03 and 2131.01 of linking terminals for promotion/bonus see Acres 5655961 or Boushy 5761647 or Eggleston 6061660 or Kelly 5816918 or Xidos 5851149), wherein the processor is further designed or configured to display performance data for each of a plurality of different game software configurations used on the gaming terminals (para 8-11, fig. 1), wherein the network interface is for communicating with a plurality of remote servers and the processor is designed and configured to communicate with the remote servers to gather information for storage in the memory regarding the plurality of gaming terminals (para 5, fig 1), to download player tracking software (para 5, 8, fig 1), download pay tables (para 5, 7-8, fig 1

for implementing progressive or bonusing; as further evidence under 2144.03 and 2131.01 for updating/modifying pay table for a bonus or progressive game see Torango 5855158 or Kelly 5816918 or Xidos 581149 or Acres 5655961 or Boushy 5761647 or Eggleston 6061660), download a device driver (para 5-8, fig 1, implicit due to gaming terminals including a computer or processor with associated drivers for network interface, display, graphics, sound, etc that require updating to utilize new features or protections/security), allows a bonus game to be generated (para 5, 7-8, fig 1), wherein the software components include game system components, gaming pay tables, bonusing, progressives, graphics, sounds, and networking (sic), games of chance include slot machines and video poker (para 3-12, fig 1, supra). The disclosed bonus (para 3, 5, 7-8, fig 1) is deemed to relate to incentives, promotions, bonuses and secondary games as in evidence above.

Regarding amended language of claim 1 and 22, the instant application presents admitted prior art that further includes based upon the gaming transaction information (para 5, 8, 11) determine a performance of a first game of chance currently installed on a first gaming terminal in the plurality of gaming terminals (para 2-12, fig 1, esp. 5, 8, 11) and as shown in evidence above the gaming machines may be dynamically configured but does not indicate the dynamic configuring is due to compare the determined performance of the first game of chance to a game performance criterion and in response to the comparison of the determine performance of the first game to the game performance criterion, download first game software components from among the game software components that allow a second game of chance different from the first game of chance to be played on the fist gaming terminal. Regarding claim interpretation, instant application discloses no specific algorithm, formula, factor or criterion regarding game

performance criterion or how the game performance criterion is calculated/determined; thus, the particular game performance criterion is conventional or at least fails to patentably distinguish from Wain as in evidence next. In a related reference, previously applied, Wain discloses a linked system that teaches it is desired to change or modify RAM (contains system control information (software) specific to game) information and hence the game of any machine, when the rate of use of the machine falls to an unacceptable level (abstract, 2:51-5:11, 5:21-6:50, esp. 6:12-50, figs 1-2) thereby teaching to compare the determined performance of the first game of chance to a game performance criterion and in response to the comparison of the determine performance of the first game to the game performance criterion, download first game software components from among the game software components that allow a second game of chance different from the first game of chance to be played on the fist gaming terminal. The performance criterion in Wain is rate of use of the machine that is based on transaction data, i.e. game start/played over time, that function is equivalent to game performance criterion claimed. Wain is relevant prior art due to being in the field of applicant's endeavor or, is reasonably pertinent to the particular problem with which the applicant was concerned. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir.1992). The level of ordinary skill in the art is as shown by the prior art. Thus, it would have been obvious to an artisan at a time prior to the invention to apply the process of to compare the determined performance of the first game of chance to a game performance criterion and in response to the comparison of the determine performance of the first game to the game performance criterion, download first game software components from among the game software components that allow a second game of chance different from the first game of chance to be played on the fist gaming terminal as taught by

Wain to improve the gaming terminal data repository and gaming system of admitted prior art for the predictable result of changing or modifying a game when its frequency of use falls to an unacceptable level. It is reiterated that Wain permits a range of different games thereby having different games on different machines (abstract, 2:51-5:11, 5:21-6:50, esp. 6:12-50, figs 1-2) where the change or modification in Wain includes to accommodate new game, correct bug, regulatory change, install new feature or the like and where different is not defined to preclude.

Also, although, the disclosed admitted prior art includes to download game software for allowing promotions as a bonus including bonuses over multiple gaming sites that are owned by different entities such as different casinos (supra), it is not clear whether the disclosed admitted prior art server and gaming system includes to download game software for a new game to a gaming terminal when a gaming performance of a current game on the gaming terminal is assessed as poor. Wain discloses a server linked to gaming terminals where the program information of the or each machine may be varied to change or modify the game played therewith in the event that signals from the machine indicate that the machine is not being frequently used so as to entice players to use the gaming terminal (supra). This is consistent with aforementioned bonus above. However, it is likewise known as a business model for an owner to replace or add new games to entice players to use a gaming terminal. Thus, it would have been obvious to an artisan at a time prior to the invention to apply the process of to download game software for a new game to a gaming terminal when a gaming performance of a current game on the gaming terminal is assessed as poor as known business model as suggested by Wain to improve the server and system of disclosed admitted prior art for the predictable result of encouraging players to continue using a gaming terminal so as to increase revenues.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over disclosure of admitted prior art in view of Wang as applied to claim 1 above, and further in view of either O'Conner (6178510) or Paravia (6508710) or Martin (5618232). It is not clear whether the disclosed admitted prior art server and gaming system in view of Wang includes to determine the gaming jurisdiction where a particular gaming terminal is located. Determining a location of a gaming terminal is known as taught by O'Conner, Paravia or Martin so as to comply with local jurisdiction gaming laws/requirements. O'Conner, Paravia or Martin is relevant prior art due to being in the field of applicant's endeavor or, is reasonably pertinent to the particular problem with which the applicant was concerned. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir.1992). The level of ordinary skill in the art is as shown by the prior art. Thus, it would have been obvious to an artisan at a time to apply the process to determine the gaming jurisdiction where a particular gaming terminal is located as taught by either O'Conner, Paravia or Martin to improve the server and gaming system of the disclosed admitted prior art in view of Wang for the predictable result of complying with local jurisdiction gaming laws.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over admitted prior art in view of Wang as applied to claim 1 above, and further in view of Walker (6110041). The disclosed admitted prior art includes to determine the identity of a user at least with respect for player tracking (para 3, 5, 7-8, fig 1) but it is not clear whether the disclosed admitted prior art server and gaming system in view of Wang includes to determine a custom software configuration for the user and download the custom configuration for the gaming terminal. However, Walker discloses a method and system for adapting gaming terminals to user preferences (abstract, 2:13-49, figs 1-11b) so as to determine a custom software configuration for

the user and download the custom configuration for the gaming terminal. Walker is relevant prior art due to being in the field of applicant's endeavor or, is reasonably pertinent to the particular problem with which the applicant was concerned. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir.1992). The level of ordinary skill in the art is as shown by the prior art. Thus, it would have been obvious to an artisan at a time prior to the invention to apply the process to determine a custom software configuration for the user and download the custom configuration for the gaming terminal as taught by Walker to improve the server and system of the disclosed admitted prior art in view of Wang for the predictable result of adapting a terminal to user preferences including language, sound, pay table, game, bonuses, etc.

6. Claims 10-11 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over disclosed admitted prior art in view of Wang as applied to claim 1 above, and further in view of Alderson (5019963), Fawcett (5845077), Frye (6047129) or Halliwell (5473772). Although the disclosed admitted prior art server and system includes to store to the memory game software transaction information (para 3, 5, 7-12), it is not clear whether the disclosed admitted prior art server and gaming system in view of Wang includes to store to memory current and past gaming software configurations for each of the plurality of gaming terminals (clm 10) and to receive game component information from the gaming terminals wherein the component information describes the game software components on the gaming terminals (clm 19). Regarding claim 10, configuration control of a machine or system is known so as that a user is aware of configuration of the version of components used in its manufacture/build for licensing, repair and maintenance. In particular, the configuration of a gaming machine is required to be maintained for compliance with local jurisdiction laws. Thus, either the admitted prior art server and system implicitly

includes configuration control such as to store to memory current and past gaming software configurations for each of the plurality of gaming terminals so as to comply with local jurisdiction laws or it would have been obvious to an artisan at a time prior to the invention to apply the process store to memory current and past gaming software configurations for each of the plurality of gaming terminals as known for compliance to improve the server and gaming system of disclosed admitted prior art for the predictable result of maintaining an auditable history of gaming terminal form/structure and software so as to comply with local laws. Further, regarding claim 19, Alderson (abstract), Fawcett (abstract), Frye (abstract) or Halliwell (abstract) disclose software updating via a server based on list of software stored on terminal being communicated from terminal to server to check for which software is out of date and needs to be updated so as to teach/suggest to receive game software component information from the gaming terminals wherein the game software component information describes the game software components store on the gaming terminals. Thus, it would have been obvious to an artisan at a time prior to the invention to apply the process to receive game software component information from the gaming terminals wherein the game software component information describes the game software components store on the gaming terminals as taught/suggested by Alderson, Fawcett, Frye or Halliwell to improve the server and gaming system of disclosed admitted prior art in view of Wang for the predictable result of automatically updating out of date software components.

7. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over disclosed admitted prior art in view of Wang as applied to claim 1 above, and further in view of Heath (6006034). Although the disclosed admitted prior art server and system includes updating game

software components (para 3, 5, 7-12), it is not clear whether the disclosed admitted prior art server and gaming system in view of Wang includes to update game software components on gaming terminals using one or more update triggers. Heath discloses a system and method for automatic version upgrading and maintenance that teaches/suggests to update game software components on gaming terminals using one or more update triggers (abstract, 1:34-3:38, and figs 1A-7C). Heath is relevant prior art due to being in the field of applicant's endeavor or, is reasonably pertinent to the particular problem with which the applicant was concerned. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir.1992). The level of ordinary skill in the art is as shown by the prior art. Thus, it would have been obvious to an artisan at a time prior to the invention to apply the process of to update game software components on gaming terminals using one or more update triggers as taught/suggested by Heath to improve the server and gaming system of disclosed admitted prior art in view of Wang for the predictable result of automatically upgrading and maintaining software based on pre-arranged periodic or event driven basis.

Terminal Disclaimer

8. The terminal disclaimer filed on 4/30/09 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 6645077 and 7186181 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Response to Arguments

9. Applicant's arguments filed 4/30/09 have been fully considered but they are not persuasive. At outset, the Office notes non-limiting typo of duplicative '2' in amended text.

On page 8, Applicant/Counsel remark that background admitted prior art lacks features of original claims regarding the memory and processor, the Office maintains prior art includes claimed features/functions and thus disagrees for following reasons. The breadth of claimed gaming terminal data repository and gaming system is maintained that it does not require the process to be automatically accomplished in that there is no requirement that precludes manual update/download of software components to gaming terminals so as to dynamically configure gaming machines (i.e. para 5) in that the claimed processor that downloads software components is not defined in claim in manner that requires automatic downloading or remote downloading so as to preclude a handheld/portable unit that downloads to gaming terminals; there is no requirement that the download software components replaces the first game but only that a second game of chance different from the first game is available, however, different includes correction of bug, complying with a new regulatory requirement as well as new feature [i.e. bonus game] or new game; there is no requirement that requires the claimed memory to only be a single memory such that the language does not preclude multiple memory units [i.e. comprising a memory permits multiple memories and does not limit to a single memory] such as a memory at a server storing transaction data and memory in gaming machine(s) storing software components (i.e. para 2-11); does not require transaction information to be obtained over a network such that it may be manually gathered (i.e. para 5, 7-9, 12) or over a network (para 5, 7-9, 11). Thus, the claimed memory arranged to store a) gaming terminal transaction information received from the plurality of gaming terminals and b) game software components for use by the plurality of gaming terminals wherein each of the gaming terminals is used to present a game of chance that is regulated by a gaming jurisdiction in which the gaming terminal is located does

not preclude the disclosed memory of admitted prior art that stores player tracking and accounting information (para 5, 7-9, 11) while the memory of each of the gaming terminals acting as stand alone units store game software components for use by the plurality of gaming terminals wherein each of the gaming terminals is used to present a game of chance that is regulated by a gaming jurisdiction in which the gaming terminal is located (para 2-5, 7) by happenstance since each gaming terminal acting as a stand alone unit stores therein game software components (para 2-5, 7) that complies with local laws where it is located in a jurisdiction by happenstance as function of use that does not distinguish structure disclosed/used of admitted prior art (MPEP 2114); while the claimed processor designed or configured to download to the gaming terminals game software components that comply with rules of the gaming jurisdiction in which the gaming terminals are located does not preclude a processor that dynamically configures the gaming machine either manually such as a handheld/portable unit or remote from server (as further evidence of linked dynamic configuration of gaming machines under MPEP 2131.01, see Pease 5759102 @ 1:11-2:17, 4:24-47, 7:59-62 or Wells 6219836 @ 1:18-43, 2:3-19 both assigned to IGT (same assignee herein) thereby, admission within those patents being admission by same assignee herein; while remote loading from server based on frequency of use data is maintained as taught by Wain as evidence shows in holding above. In addition, the functional claim language regarding regulated by a gaming jurisdiction and comply with rules of the gaming jurisdiction pertain to manner of use of software or program stored for used in a gaming machine that does not patentably distinguish over gaming machines having game software components (para 2-5, 7) to function and dynamically configured to operate in locations at least within United States (para 7) that thereby comply with gaming jurisdiction

requirements to operate legally. However, in further consideration under MPEP 2131.01, see Wells 6219836 @ 2:3-19 that assignee admits downloading software version to comply with jurisdictional approvals. Use of software components that comply with local laws is hornbook engineering and does not critically distinguish since the functional language is environment of use where failure to comply although may occur, would yield a gaming system that is an illegal device and thus has no utility. Thus the insinuation by Assignee that gaming system (para 2-12, fig 1) does not discuss complying with jurisdiction is incongruent with utility of the admitted prior art system since although there is no explicit discussion; the system is deemed to comply with jurisdiction laws/rules [i.e. para 7] to have utility since failure to comply would cause the Gaming Commission of associated jurisdiction to close down the system (i.e. thus no utility).

In reply to remark on page 9 that the admitted prior art does not describe downloading of game software components and an infrastructure for supporting such downloads and as best understood takes exception to disclosed gaming terminals in admitted art (fig 1) being dumb terminals, first, to be clear on record, the reference to dumb terminals was an alternative interpretation of disclosed network of linked gaming terminals where the gaming terminals were dumb and thus required downloading of game software components from server to function. Since, it appears that Applicant contends the gaming machines are not dumb terminals, the Office has dropped the argument. However, the Office maintains that the described admitted prior art includes of stand alone or linked gaming terminals where a processor to download game software components to dynamically configure the gaming terminals (para 5) as evidence shows in above paragraph and holding via use of portable source or remote server.

In response to remark on page 9-10 that the admitted prior art and combination does not teach function of claims as amended, the Office disagrees and the notes the remark is not well taken since the breadth of claim is broader than asserted by Applicant as noted in claim interpretation above and the instant application does not disclose any specific algorithm, formula, factor or criterion regarding game performance criterion or how the claimed game performance criterion is calculated or determined. Thus, the particular game performance criterion is conventional or at least fails to patentably distinguish from Wain as in evidence in holding above. In particular, the admitted prior art states in part that gaming machines may be dynamically configured; while Wain discloses a linked system that states it is desired to change or modify RAM (contains system control information (software) specific to game) information and hence the game of any machine, when the rate of use of the machine falls to an unacceptable level (abstract, 2:51-5:11, 5:21-6:50, esp. 6:12-50, figs 1-2) thereby teaching to compare the determined performance of the first game of chance to a game performance criterion and in response to the comparison of the determine performance of the first game to the game performance criterion, download first game software components from among the game software components that allow a second game of chance different from the first game of chance to be played on the fist gaming terminal. The performance criterion in Wain is rate of use of the machine that is based on transaction data, i.e. game start/played over time, that function is equivalent to game performance criterion claimed. Thus, contrary to Applicant opine, when the combination is taken as a whole at a time prior to the invention, the combination suggests to an artisan a gaming terminal data repository or gaming system with a memory and processor configured as claimed, as in evidence in holding.

The Office agrees that Alderson, Fawcett, Frye, Halliwell and Heath do not discuss games or games of chance, but none of them were relied upon for the particular software application to be a game or game of chance as shown in evidence in the holding, the admitted prior art shows/teaches games and games of chance; while the cited references were each relied upon for other facets as in evidence in holding. Thus, the remark is not well taken. The Office agrees that O'Conner, Paravia, Martin, Walker and Wain describe gaming, but the Office disagrees that none teach the limitation of amended claims, as in evidence above.

10. Although not a holding herein, Pease (5759102, 6135887) and Wells (6219836, 6488585 and 6805634) is equally relevant [as in evidence from action in parent 10659827] and may be applied to presently claimed invention at least for same reasons indicated above with respect to Wain in so far as automatic or server control of updates, upgrades and maintenance is taught by each cited system.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Sager whose telephone number is 571-272-4454. The examiner can normally be reached on T-F, 0700-1730 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on 571-272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. Sager/
Primary Examiner, Art Unit 3714